Since no note or memorandum of the moneylender's contract was given to the respondent, the contract for repayment of the money lent and the security given by the borrower to the applicant are by virtue of the said section 16(1) unenforceable and the respondent is entitled to a declaration.

I do, therefore, order that the application for an order that the land be sold at public auction be dismissed and do declare that the contract for repayment by the respondent of the principal and interest purported to be secured by a memorandum of charge (dated 31st day of August, 1952, and made between the respondent of the one part and the applicant of the other part and registered as Negri Sembilan Presentation No. 95101) and the charge over the land described in the said memorandum of charge are unenforceable.

I am now prepared to hear submissions concerning the necessary consequential orders and any argument concerning costs.

Application dismissed.

IP YING WAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 24 of 1957]

Penal Code s. 448 — House trespass with intent to annoy — Accused making statement from dock — Whether Magistrate can cross-examine him.

In this case the appellant was charged with an offence under section 448 of the Penal Code in that he committed house trespass by entering into the house of one Lum Kee with intent to annoy him. The evidence suggested that the accused went to the house to annoy Lum Kee's son but there was no evidence to show that accused entered the house to annoy Lum Kee. The charge was not amended but the Magistrate convicted the accused on the original charge. The accused made a statement from the dock and the Magistrate cross-examined him on his statement.

Held: (1) the charge against the accused was not proved and therefore the conviction must be set aside;

(2) when an accused elects to make a statement from the dock he is not subject to cross-examination.

MAGISTRATE'S CRIMINAL APPEAL.

Kam Woo Wah for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with an offence punishable under section 448 of the Penal Code in that he committed house trespass by entering into the building of one Lum Kee, used as dwelling-house with intent to annoy the said Lum Kee. The appellant was found guilty, convicted and sentenced to four months' imprisonment. This is an appeal against conviction.

There is no question that for the offence of criminal trespass the prosecution must prove that the entry took place with the intent to intimidate, insult or annoy etc. It must be proved that some criminal intent was present in the mind of the accused at the time of entry and mere knowledge that the entry will annoy the occupant of the premises is not sufficient. It is quite clear in the present case that the evidence for the prosecution does not show that the accused had the intent to annoy Lum Kee; it may be that he entered the building with the intent to annoy Lum Kee's son, P.W.2 and under the circumstances the charge was not proved. It is in my opinion possible for the Magistrate to amend the charge before conviction but he did not do so and I do not consider that it is proper at this stage to rectify the error. Although the appellant may be guilty of some other offence, the charge against him has not been proved.

The appeal is therefore allowed and conviction and sentence set aside.

I should add that when the accused was called upon to make his defence he elected to make a statement from the dock and in this statement he admitted that he fought with P.W.2. The learned Magistrate, however, proceeded to cross-examine the accused. This should not have been done. When the accused elects to make a statement from the dock he is not subject to cross-examination.

Appeal allowed.

Solicitors: *S. M. Yong & Co.*

CHUA KIM HONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 26 of 1947]

Emergency (Registration Areas) Regulation, 1948, reg. 20A — Charge of accommodating a person without entering particulars in hotel register.

Hotel — Accommodation — Meaning to "accommodate."

In this case the appellant pleaded guilty to a charge under reg. 20A of the Emergency (Registration Areas) Regulation 1948. The facts were that a police officer went to a hotel of which the appellant was managing partner and of which he was in charge and saw a lady running from a room in the hotel. He stopped her and told her to return to the room. In the room he saw a Chinese male who was hurriedly dressing. The woman was not completely dressed. On investigation it was found that the names of the two persons were not entered in the register of the hotel. On admission of the facts by the appellant, he was convicted and sentenced to a fine of $1,000.

Held: (1) the object and purpose of the Emergency (Registration Areas) Regulation 1948 is to have a check on people within a registered area and regulation 16 was not intended to be a check on people who casually and for a temporary purpose make use of a room in a hotel;

(2) the word "accommodate" in the regulation under which the appellant was charged cannot mean a casual occupation of part of the premises or a room in a boarding house;

(3) when the appellant pleaded guilty he did not appreciate the ingredients of the offence for which he was charged and therefore the conviction and sentence must be set aside.

MAGISTRATE'S CRIMINAL APPEAL.

M. Edgar for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with an offence under regulation 16(3) of the Emergency (Registration Areas) Regulation, 1948 and punishable under regulation 20A of these Regulations.

The accused pleaded guilty and admitted the facts as set out on the reverse of the application for summons attached to the charge. These facts were that a police officer went to the hotel of which the appellant is Managing Partner and of which he is in charge and saw a lady running out from a room in the hotel. He stopped her and told her to return to the room. In the room he saw a Chinese male who was hurriedly dressing. The woman was not completely dressed. On investigation it was found that the names of these two persons were not entered in the register of the hotel. On admission of these facts by the appellant the appellant was convicted and sentenced to a fine of $1,000.

This is an appeal from that conviction and sentence on two grounds (1) the illegality of the trial and of the sentence and (2) that the facts admitted disclosed no offence. For the purpose of this appeal it is sufficient if I deal with the second ground of appeal.

Counsel for the appellant submitted that the facts as disclosed do not amount to an offence under regulation 16(3) of the aforesaid Regulations. That regulation applies to cases where the proprietor and manager etc. of the hotel "accommodates any person"; it was submitted by counsel that the word "accommodate" in these regulations has the same meaning as in the Boarding House Enactment (F.M.S. Cap. 87) and in the rules made thereunder. Under rule 17 of these Rules information is to be furnished to the manager or proprietor of boarding house when a guest is staying there for one night or longer; similarly the word "accommodate" in the regulation under which the appellant was charged cannot mean a casual occupation of part of the premises or a room in a boarding house.

I do not think it is necessary to refer to the Boarding Houses Enactment to come to the conclusion that the word "accommodate" in these regulations cannot have the meaning given to it by the prosecution, but the Rules under that Enactment support that view.

The object and purpose of these Regulations is to have a check on people within a registration area and regulation 16 was not intended to have a check on people who casually and for a temporary purpose make use of a room in a hotel. I agree therefore that the facts as admitted by the appellant do not amount to an offence and the appellant should have been acquitted It is obvious that when the appellant pleaded guilty he did not appreciate the ingredients of the offence with which he was charged; these were not explained to him as it is clear that the learned President took a wrong interpretation of the Regulation.

The appeal is therefore allowed and conviction and sentence are set aside and the fine, if paid, should be refunded to the appellant.

Appeal allowed.

Solicitors: *Bannon & Bailey.*

ORIENTAL BANK OF MALAYA LTD. v. N. SUBRAMANIAM

[C.A. (Thomson C.J. (F.M.), Whyatt C.J. (S) and Buhagiar J.) May 30, 1957]

[K. L. — F.M. Civil Appeal No. 57 of 1956]

Banking — Guarantee — Construction of — Surrounding circumstances.

In this case the respondent executed a letter of guarantee in the following form: "In consideration of your having at my request agreed to allow N. Krishnan to overdraw his current banking account with you to the extent of $25,000 in accordance with the terms of the Personal Bond overleaf, I guarantee repayment to you of any sum to the extent of $25,000 as shall be due by the said N. Krishnan on account of such overdraft together with accrued interest, whenever I am called upon to do so. This guarantee shall be a continuing guarantee and shall remain in force till such time that the said N. Krishnan shall have fully and completely paid all amounts due to you in respect of such overdraft." At the date of the execution of the letter of guarantee the respondent knew that N. Krishnan, who was his brother, had a debit balance of $26,150 at the bank, made up of actual advances amounting to $19,288 and interest and service charges amounting to $6,862. The appellants sued N. Krishnan as principal and the respondent as guarantor for $28,877 being money lent to the principal and interest and charges. The respondent in his defence argued that he had only guaranteed the debt of the principal in respect of overdrafts made to him by the bank after the date of execution of the letter of guarantee and that these advances with interest amounted to $379, which sum he brought into Court. The trial Judge gave judgment to the appellant for $379 only with costs to the respondent.

Held: (1) the letter of guarantee must be construed with regard to the surrounding circumstances;

(2) in this case the overdraft mentioned in the letter of guarantee was the overdraft which was in existence when it was executed and therefore the respondent was liable to pay the sum of $28,877 being the total of the debit balance of the principal.

Cases referred to:—

(1) *Reddie v. Williamson* (1863) 1 Macph. 228.

(2) *Inland Revenue Commissioners v. Holder* (1931) 2 K.B. 81.